

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
	:	
v.	:	NO. 05-CR-0038
	:	
	:	
VERNON DOUGLAS	:	

**SURRICK, J.**

**OCTOBER 27, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is Defendant Vernon Douglas's Motion For Judgment Of Acquittal Pursuant To Fed. R. Crim. P. 29(b) (Doc. No. 33), Defendant's Pro Se Motion Pursuant To Rules 29 And 33 Of The Fed. R. Crim. P. (Doc. No. 32), and the Government's Response in opposition thereto (Doc. No. 34). For the following reasons, Defendant's Motions will be denied.

**I. Background**

Defendant Vernon Douglas was indicted on charges of distribution of cocaine base ("crack") in violation of 21 U.S.C. § 841(a)(1) (Count 1); distribution of cocaine base within 1000 feet of a school in violation of 21 U.S.C. §§ 860 and 841(a)(1) (Count 2); possession of cocaine base in violation of 21 U.S.C. § 844(a) (Count 3); possession with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) (Count 4); possession with intent to distribute cocaine within 1000 feet of a school in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) (Count 5); possession of a firearm in furtherance of a drug trafficking crime in

violation of 18 U.S.C. § 924(c)(1) (Count 6); and possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) (Count 7). Defendant was found guilty by a jury on Counts One, Three, Four, and Six.<sup>1</sup> After the jury had rendered its verdict, Count Seven was disposed of in a stipulated non-jury trial.<sup>2</sup> Defendant was also found guilty on Count Seven. Defendant now seeks relief on the grounds that the evidence was insufficient to support a finding that Defendant was in constructive possession of the bag of cocaine weighing 94.21 grams (Count Four) and the three guns found in the house (Counts Six and Seven). Defendant argues that the government failed to show that he had knowledge that these items were present in his home, and failed to show that he had an ability to exercise dominion and control over these items.<sup>3</sup>

## **II. Legal Standard**

In considering a post-verdict motion for judgment of acquittal under Rule 29,<sup>4</sup> we must determine “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable

---

<sup>1</sup> Count Two and Count Five were dismissed by Order dated September 26, 2005 (Doc. No. 31) at the request of the Government.

<sup>2</sup> Counsel agreed that Count Seven would be bifurcated and tried non-jury.

<sup>3</sup> In his initial motion Defendant indicated an intention to supplement the motion with a memorandum of law and a response to the Government’s opposition. Defendant failed to do so.

<sup>4</sup> Federal Rule of Criminal Procedure 29(a) provides, in pertinent part: “[t]he court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” The “sole foundation upon which a judgment of acquittal should be based is a successful challenge to the sufficiency of the government’s evidence.” *United States v. Frumento*, 426 F. Supp. 797, 802 n.5 (E.D. Pa. 1976) *quoted in United States v. Carter*, 966 F. Supp. 336, 340 (E.D. Pa. 1997); *see also* 2A Charles Alan Wright, *Federal Practice and Procedure* § 466 (3d ed. 2000) (“There is only one ground for a motion for a judgment of acquittal. This is that the evidence is insufficient to sustain a conviction of one or more of the offenses charged in the indictment or information.” (internal quotation omitted)).

doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The evidence must be examined as a whole in the light most favorable to the jury verdict, with the presumption that the jury properly evaluated credibility of the witnesses, found the facts, and drew rational inferences. *See United States v. Iafelice*, 978 F.2d 92, 94 (3d Cir. 1992). The verdict of the jury must be upheld unless, viewing the evidence in this fashion, no rational jury could have found the defendant guilty beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *United States v. Ashfield*, 735 F.2d 101, 106 (3d Cir. 1984).

Pursuant to Rule 33(a) of the Federal Rules of Criminal Procedure, the court may exercise its discretion to grant a defendant a new trial if required in the interest of justice.<sup>5</sup> Such motions should be granted sparingly and only where the failure to do so would result in a miscarriage of justice. *See United States v. Copple*, 24 F.3d 535, 547 n.17 (3d Cir. 1994). In considering a motion under Rule 33, “[t]he court may weigh the evidence, but may set aside the verdict and grant a new trial only if it determines that the verdict constitutes a miscarriage of justice, or if it determines that an error at trial had a substantial influence on the verdict.” *United States v. Enigwe*, Crim. A. No. 92-00257, 1992 WL 382325, at \*4 (E.D. Pa. Dec. 9, 1992) (citation omitted). In contrast to motions for judgment of acquittal under Rule 29, a motion for a new trial does not require the court to view the evidence in the light most favorable to the government. Rather, the court must weight the evidence and evaluate the credibility of

---

<sup>5</sup> Federal Rule of Criminal Procedure 33(a) provides, in pertinent part: “Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.”

witnesses. *See United States v. Rennert*, No. Crim. A. 96-51, 1997 WL 597854, at \*17 (E.D. Pa. Sept. 17, 1997) (citing *United States v. Martinez*, 763 F.2d 1297, 1312 (11th Cir. 1985)).

### **III. Legal Analysis**

Defendant argues that the evidence presented at trial was legally insufficient to support a conviction based on constructive possession of the drugs and firearms found in his home. He claims that the Government's evidence did not demonstrate that he had knowledge or dominion and control over these items.

As discussed in Part II, *supra*, we consider Defendant's Rule 29 Motion viewing the evidence in the light most favorable to the prosecution. *See Iafelice*, 978 F.2d at 94. We must sustain the verdict unless “no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt.” *United States v. Stratton*, No. Crim. A. 99-326, 2000 WL 892840, at \*3 (E.D. Pa. July 6, 2000) (quoting *United States v. Coleman*, 811 F.2d 804, 807 (3d Cir. 1987) (citation omitted)). “The evidence need not unequivocally point to the defendant's guilt as long as it permits the jury to find the defendant guilty beyond a reasonable doubt.” *United States v. Pungitore*, 910 F.2d 1084, 1129 (3d Cir. 1990), *cert. denied*, 500 U.S. 915 (1991).

It is well-established that the Government is not required to show that a defendant was in actual possession of the contraband charged. *See Iafelice*, 978 F.2d at 96; *United States v. Martorano*, 709 F.2d 863, 866 (3d Cir. 1983); *United States v. Davis*, 461 F.2d 1026, 1035 (3d Cir. 1972). A defendant may be convicted based on circumstantial evidence sufficient to prove

constructive possession. *See Martorano*, 709 F.2d at 866 (“Constructive possession may be shown through either direct or circumstantial evidence.”). As the Third Circuit noted in *Iafelice*:

It is not unusual that the government will not have direct evidence. Knowledge is often proven by circumstances. A case can be built against the defendant grain-by-grain until the scale finally tips; and considering all the facts and drawing upon rational inferences therefrom, a reasonable jury could find beyond a reasonable doubt that the defendant committed the crime for which he is charged.

*Iafelice*, 978 F.2d at 98. In order to prove constructive possession, the Government must establish that a defendant “knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons.” *United States v. Garth*, 188 F.3d 99, 112 (3d Cir. 1999) (citations omitted).

The following evidence and testimony was presented at trial. Defendant resides at the property located at 3223 West Norris Street in Philadelphia.<sup>6</sup> Defendant’s driver’s license, water bills, and a check from State Farm Mutual Automotive Insurance Company, all bearing Defendant’s name and the above address were found in the residence. (Sept. 20, 2005 Tr. at 19:16-25; 56:1-25; 57:10-12.) Defendant’s driver’s license and social security card were found in a china cabinet in the residence next to a number of plastic bags that are typically used for the packaging of powder cocaine and crack cocaine. (*Id.* at 21:6-12.) Several police officers testified that on June 23, 2004, when the search warrant for Defendant’s residence was executed,

---

<sup>6</sup> In addition to the testimony presented by the Government, Defendant’s daughter testified at trial for the Defense. She testified that her father was the only person living at the residence located at 3223 West Norris Street. (Sept. 20, 2005 Tr. at 146:14-22). However, she also testified that numerous other cousins and family friends had access to her father’s house. (*Id.* at 144:5-25; 145:1-16.) The jury was able to judge the credibility of this witness and her testimony along with that of the police officers who testified to their findings upon executing the search warrant.

Defendant was the only person present in the house. (*Id.* at 13:14-25; 15:1-6; 30:13-18.) When police officers entered the property, Defendant was seated at a table in the living room and had \$305 in his pocket. (*Id.* at 42:7-19.) A search of the property pursuant to the search warrant revealed the presence of a triple beam scale, commonly used to weigh narcotics, sitting in plain view on top of the bar in the dining room area just a short distance from where Defendant was sitting. (*Id.* at 15:7-25.) A further search of the property revealed the presence of a bag of cocaine hidden in a piano bench in the dining room (*Id.* at 35:9-24), two packages of crack cocaine hidden in a magnetic hide-a-key attached to a tool box in the living room area (*Id.* at 36:21-25; 37:1), and three guns found hidden in a vase in the living room, in a toolbox by the front door, and in the second floor bedroom respectively (*Id.* at 54: 7-25; 55: 1-4; 31: 15-20).

In addition to the evidence and testimony regarding execution of the search warrant on June 23, 2004, the Government also presented evidence and testimony relating to events that occurred at 3223 West Norris Street one day earlier. On June 22, 2004, Officer London and a confidential informant proceeded to the Defendant's residence where they purchased four small packages of crack cocaine from the Defendant. Officer London was standing just a few feet from Defendant when this transaction took place. (Sept. 19, 2005 Tr. at 34:12-25; 35:1-11.) Officer London had earlier provided the confidential informant with a twenty-dollar bill, pre-recorded buy money, which the informant gave to the Defendant at the time of the drug purchase, in exchange for the four packets of crack cocaine. (*Id.* at 34:9-11; 35:3-7.) The following day, when officers executed the search warrant at Defendant's residence, the Defendant had in his pocket the pre-recorded twenty dollar bill from the drug purchase the day before. (*Id.* at 42:14-25; 43:22-25; 44:1-12.)

Viewing the evidence and the logical inferences to be drawn therefrom in the light most favorable to the government, we are satisfied that there is more than sufficient evidence to support the jury's conclusion that Defendant knowingly had the power and intention to exercise dominion and control over the guns and cocaine in his house. Defendant was the only resident of the house. He was the only person present in the house at the time the guns and drugs were found. The fact that Defendant lived at the searched property and the fact that he alone was present at the time the drugs and guns were found are relevant facts for the jury to consider when determining the issue of Defendant's knowledge of and control over the weapons and drugs found in the house. Although ownership and presence may not alone be sufficient to support a finding of constructive possession, these facts along with all of the surrounding circumstances may be sufficient to support such a finding. *See Iafelice*, 978 F.2d at 97 (explaining that ownership does not exist in a vacuum, but must be considered in the context of the surrounding circumstances, which may either reinforce or undercut its significance). As the D.C. Circuit has observed:

[W]hile mere proximity to illegal drugs, mere presence on the property where they are located, or mere association, without more, with persons who do control them is insufficient to support a finding of possession, . . . such proximity, presence, or association is sufficient when accompanied . . . with testimony connecting the defendant with the incriminating surrounding circumstances.

*United States v. Staten*, 581 F.2d 878, 885 (D.C. Cir. 1978) (quoting *United States v. Ratcliffe*, 550 F.2d 431, 434 (9th Cir. 1977) (citations omitted)).

The surrounding circumstances in this case include the fact that only one day earlier, at the same residence in which the cocaine and guns were found, Defendant sold crack cocaine to

an undercover officer and a confidential informant. When his house was searched the next day, Defendant had the twenty dollar bill of pre-recorded buy money in his pocket. In addition, when the house was searched, police found a scale—typically used for weighing drugs that are then sold in small quantities—in plain view in the dining room, just a few feet from the living room where Defendant was sitting. One of the guns was found in a tool box which was located at the front door, the door from which Defendant was selling his drugs. Another gun was found in a vase in the living room where Defendant was seated. The third gun was found in a bedroom on the second floor of the home. Also in the bedroom were clothes, a TV set, and a fan. All of the guns were loaded with ammunition. Dealing drugs is a dangerous profession. Drug dealers commonly keep guns close-by for their own protection. Finally, Defendant's driver's license and social security card were found next to small plastic bags that are commonly used to package drugs after they are weighed. The surrounding circumstances clearly connect Defendant to the drugs and guns found in his home. While Defendant's daughter testified that family members and friends also had keys and access to the property, the jury was entitled to assess the credibility of this witness and compare this testimony with the rest of the evidence and testimony offered at trial.

The evidence against this Defendant was overwhelming. We conclude that it was more than sufficient to permit the jury to find beyond a reasonable doubt that Defendant knowingly had the power and intent to exercise dominion and control over the cocaine and the three firearms found in his house. Moreover, we perceive no miscarriage of justice here. Accordingly, Defendant's motion for judgment of acquittal or a new trial will be denied.

An appropriate Order follows.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
	:	
v.	:	NO. 05-CR-0038
	:	
	:	
VERNON DOUGLAS	:	

**ORDER**

AND NOW, this 27th day of October, 2005, upon consideration of Defendant Vernon Douglas's Motion for Judgment of Acquittal Pursuant to Fed. R. Crim. P. 29(b) (Doc. No. 33), Defendant's Pro Se Motion Pursuant to Rules 29 and 33 of the Fed. R. Crim. P. (Doc. No. 32), and after a review of the evidence and testimony presented at trial, it is ORDERED that the said Motions be and the same are hereby DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge